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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**ORIGINAL
FILE**

vendors in the nation's economy not obligated to meet specific and enforceable quality standards.¹ The basis for filing the Petition at this time is claimed to be the placement in the public domain of a report compiled by individual staff members of a U.S. House of Representatives subcommittee.² ICA and CFA argue that since this information has not yet been placed before the Commission in any formal regulatory proceeding, their Petition "transcends the record" on service quality, and merits a new rulemaking to readdress the issues.³

I. THE FACTS AND CIRCUMSTANCES WEIGH HEAVILY AGAINST COMMENCEMENT OF ANY RULEMAKING.

There are myriad reasons to deny this thin and repetitive restatement of the legislative agenda of ICA and CFA. The Petition professes to suggest that there will be little if any impact from implementation of its suggestions, and it downplays all of the impacts it recognizes to be likely. It is clear that the underlying motivation is not to improve the quality of service, but to gain leverage against exchange carriers with respect to individual user (primarily large user) claims about the technical details of service.

The most apparent reasons for denying this Petition are

¹ Petition at 7 and Summary.

² Petition at 2.

³ Petition at 3.

four:

A. The Issues Have Already Been Fully Considered.

The Commission has already fully considered the issues in the Petition and has resolved the issue of service quality to its satisfaction. In its Second Report and Order in the price caps proceeding,⁴ the Commission recognized that incentives for carriers to maintain service quality and to develop their networks were integral parts of the price cap program, and it implemented expanded service quality monitoring to ensure that the then-current high quality it recognized was maintained.⁵ The Commission recognized that parameters of service quality already exist in the broad requirements of the Communications Act, in state regulatory statutes and in tariffs.⁶ It found specifically that "Nowhere in the record is there any indication that service quality is at present unacceptable or problematic. Neither is there any indication that the states are ineffective at monitoring and regulating service quality, to the detriment of interstate service."⁷ The Commission specifically rejected new "Federalized" standards. It concluded that it would not impose reporting burdens that outweighed the benefits and its decision

⁴ Second Report and Order, Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 5 FCC Rcd 6786 (1990).

⁵ Second Report and Order at ¶¶351-353.

⁶ Id. at ¶356.

⁷ Id. at ¶358.

confirmed that more extensive regulation would do so.⁸

On reconsideration, the Commission confirmed its conclusions that price caps would "stimulate exchange carriers to maintain and increase the high level of service previously available."⁹ Nevertheless, it expanded its collection of data on service quality indicators, and it directed the Common Carrier Bureau to develop reporting requirements in line with its decision.¹⁰ The Commission contemplated at that point that only "fine tuning" was needed.¹¹ It rejected any need for new standards, and it found that the parties seeking new regulation had offered "no new arguments."¹²

Thereafter, the Common Carrier Bureau issued a Memorandum Opinion and Order that provided for extensive detail in service quality reporting by the affected carriers.¹³ In that Order, the Common Carrier Bureau specifically considered and rejected requests for a requirement that exchange carriers file service

⁸ Id. at ¶360.

⁹ Order on Reconsideration, Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 6 FCC Rcd 2637 (1991), at ¶179.

¹⁰ Id.

¹¹ Id.

¹² Id. at ¶192.

¹³ Memorandum Opinion and Order, Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, 6 FCC Rcd 2974 (1991).

standards in their tariffs.¹⁴ ICA's own arguments were rejected there; CFA failed to participate at all.¹⁵ The Bureau has since expanded the anticipated reporting further.¹⁶ The recently-revised reporting framework begins at the end of this month. ICA and CFA fail even to give this new framework the opportunity to be implemented before fabricating a purportedly new "need" for additional regulation.

B. No Quality of Service Issue Exists that Demands A Rulemaking.

The quality of service provided by exchange carriers remains high. Throughout the price cap proceeding, as demonstrated in part above, the Commission has recognized the high quality of service provided to customers by exchange carriers. Since the implementation of price caps, there has been no diminution in that service quality. In many cases, it has been demonstrated that service quality actually has gotten better.

The Petition is devoid of any suggestion that Commission action is necessary to address a change in circumstances or other situation. It lacks any documentation of problems, even anecdotal documentation. The Commission can only conclude that

¹⁴ Id., at Attachment B, Section IV.B.1., 6 FCC Rcd at 3024-6.

¹⁵ Id. 6 FCC Rcd at 2997.

¹⁶ Adjustment to Price Cap Carriers' Service Quality and Infrastructure Reports in ARMIS, DA-92-370, released March 31, 1992.

its original conclusions are confirmed by the absence of any concrete information in the Petition.

Assuming for the sake of argument that the specific level of quality may vary among carriers, it nevertheless remains high on a generalized basis. Bona fide reasons exist for variations - including differing service areas, capital constraints, and state commission demands. Even anecdotal arguments (absent so far here) would provide no basis for changing the Commission's current view of service quality. Thus, there is no evidence of any need for the rule suggested.

C. The Burden Would Not Justify Any Rule.

The burden of such a new rule would significantly outweigh the benefit. ICA and CFA intentionally downplay the impact of their proposal; however, their Petition acknowledges that negative consequences would in fact result, even with the claimed "modest" new regulation.

Use of the tariff process to enforce specific quality standards would have several significant and unique adverse side effects. In today's communications marketplace, it would unreasonably chill the implementation of new technologies, a result that is at odds with both the specific objectives of incentive regulation and the express terms of the Communications

Act.¹⁷ The market, and the technology in particular, are in a constant state of flux. Tariffed standards would be particularly inappropriate in light of these rapid changes. Tariff processes would become another forum for controversy and conflict among competitors, not an avenue for the listing and pricing of Title II services. Changing the focus of tariff procedures would inject delays into the process, and impact even simple tariff changes. It would waste Commission time and resources. More significantly, it would harm customers who could benefit from new or improved service offerings.

D. The Petition is Procedurally Barred.

Finally, the Petition is procedurally defective in a number of respects. The recent distribution of a flawed compilation of preexisting data by House subcommittee staffers is only marginally relevant to the issue of whether service quality standards should be introduced into tariffs. It certainly does not rise to the level of fresh information that merits new consideration of an issue, particularly this one, one that has been fully considered and resolved by both the Commission and the Bureau.

This filing constitutes a belated petition for reconsideration of a specific issue that has been exhaustively considered. Under 47 CFR §1.429(b), a petition relying on facts

¹⁷ 47 USC §157.

not previously presented can be filed only if the facts relied upon relate to new events or circumstances that have changed, the facts were unknown to the petitioner and the petitioner could not have learned of them through ordinary diligence, or the public interest requires consideration of the facts relied upon. The Petition qualifies under none of these criteria.

Under Commission rules, a petition for reconsideration is due 30 days from the date of public notice.¹⁸ This Petition is severely out of time in relation to even the most recent related decision - the specific decision of the Bureau in early 1991 that declined to require exactly the relief that is being sought here.¹⁹

As a rulemaking petition, the Petition faces similar hurdles. The Commission's rules are intended in part to conserve resources and to limit endless reassessment of the same issues. The rule covering the filing of rulemaking petitions calls for denial or dismissal of petitions that are "moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission..."²⁰ This Petition qualifies for dismissal under most of those criteria.

¹⁸ 47 CFR 1.429(d).

¹⁹ CFA as a petitioner here must be separately barred from filing this Petition, as it failed to participate in the Bureau proceedings at all.

²⁰ 47 CFR 1.401(e).

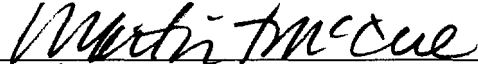
There are other reasons why this Petition does not merit action. What is set out above is certainly adequate to respond to ICA and CFA. However, the Commission should also remain aware that carriers and others already publish the product of standards bodies as to service characteristics and conventions, and some carriers also reference many such publications in their tariffs, to the extent the Commission permits. Many alternatives exist for users to gain access to these materials. The Petition can be viewed more accurately as a vehicle by which large users are attempting to seek a basis for the abatement or offset of charges billed by carriers, or a new way to file complaints that will lead to the consumption of Commission and carrier resources. That is neither appropriate nor a justification for a rule based on a public interest need. In some respects, sophisticated large users can be expected to benefit uniquely from the Petition, resulting in the offloading of more network costs on consumers. There is only one way in which this Petition can "transcend the record": it would place ICA and CFA above the law governing Commission procedures.

ICA's attempt to bootstrap itself into "changed circumstances" should be rejected, and the Petition denied. The Commission's stated expectations as to service quality have proven to be realistic, and further action is unnecessary. If anything, the Commission should be most watchful that its own processes are not manipulated or otherwise allowed to undermine

the service commitment that prevails within the exchange carrier community.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

BY 

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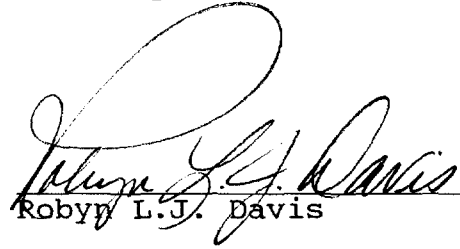
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June 22, 1992

CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on June 22, 1992
copies of the foregoing Comments of the United States Telephone
Association were either hand-delivered, or deposited in the U.S.
Mail, first-class, postage prepaid to the persons on the attached
service list.


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